

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

MARY A. KIZER,)	
)	
Plaintiff,)	
vs.)	NO. CIV-04-1066-HE
)	
JO ANNE B. BARNHART,)	
Commissioner, Social Security)	
Administration,)	
)	
Defendant.)	

ORDER


Plaintiff Mary A. Kizer instituted this action seeking judicial review of the final decision of the defendant Commissioner denying her application for supplemental security income payments under the Social Security Act. Consistent with 28 U.S.C. § 636(b)(1)(B), the case was referred to Magistrate Judge Bana Roberts, who has issued her Report and Recommendation recommending that the Commissioner's decision be reversed and the matter remanded for further administrative proceedings. The magistrate judge found that the administrative law judge failed to include any mental restrictions in assessing the plaintiff's residual functional capacity.

The parties, having failed to object to the Report and Recommendation, waived their right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996), *cert. denied*, 519 U.S. 909 (1996). *See* 28 U.S.C. § 636(b)(1)(C); LCvR72.1(a). Accordingly, the court adopts Magistrate Judge Robert's Report and Recommendation, **REVERSES** the final decision of

the Commissioner and **REMANDS** the case for further proceedings consistent with the Report and Recommendation, a copy of which is attached to this order.

IT IS SO ORDERED.

Dated this 6th day of May, 2005.



JOE HEATON
UNITED STATES DISTRICT JUDGE